

DECISION



17266
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200974

DATE: March 9, 1981

Claim for Additional Payment
MATTER OF: George Zwolinski - Computation of Selective
Reenlistment Bonus

- DIGEST:
1. Service member who, with 1 year of service remaining under enlistment contract, obtains a discharge and immediately reenlists for 4 years is entitled to Selective Reenlistment Bonus (SRB) based upon only 3 years of additional obligated service. Fact that member had previously adjusted his expiration of term of service to a date 8 months earlier than date of termination of initial enlistment contract does not affect computation of SRB.
 2. Where service member reenlists in reliance upon alleged representations that he would receive a certain amount as a Selective Reenlistment Bonus (SRB) and Army correctly pays a lesser SRB, member is not entitled to recover the additional amount promised on this basis since Government officers have no authority to contradict or nullify provisions of statutes or regulations.

This action is in response to an appeal by Mr. George Zwolinski from the Settlement Certificate dated June 26, 1980, issued by our Accounting and Financial Management Division (then the Financial and General Management Studies Division), which disallowed Mr. Zwolinski's claim for an additional payment of Selective Reenlistment Bonus (SRB). We agree with that action.

In 1971, Mr. Zwolinski entered a 4-year enlistment contract which was to run from November 1, 1971, to October 31, 1975. Although Mr. Zwolinski's submission created some ambiguity as to the exact dates involved, the record indicates that Mr. Zwolinski executed a document on January 25, 1974, which adjusted his expiration of term of service (ETS) from October 31, 1975, to February 28, 1975. On October 31, 1974, after serving 3 years of his enlistment contract, Mr. Zwolinski was

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discharged for the purpose of immediate reenlistment. On November 1, 1974, he reenlisted for a term of 4 years and qualified for an SRB. Mr. Zwolinski also alleges that he received authorization in May 1974 to be released from active duty on October 31, 1974, and this release authorization had no bearing on his reenlistment.

Subsection 308(a) of title 37, United States Code, provides that an SRB is to be paid to a qualified member who reenlists and is to be computed by using a multiplier measured by the number of years, or monthly fractions thereof, of "additional obligated service." In 55 Comp. Gen. 37 (1975) we stated that:

"In general, when a person is discharged, his service obligation under his then current enlistment period terminates effective that date for all purposes. If he reenlists thereafter for any period, such period would clearly constitute 'additional obligated service' within the meaning of 37 U.S.C. 308(a). However, when a member's discharge is approved specifically for the purpose of his immediate reenlistment * * * we do not consider that the former obligation is terminated. In such a situation, the balance of the member's then current enlistment or extension of that enlistment would remain as a period of existing obligated service for the purpose of 37 U.S.C. 308(a) and * * * only the difference between the remainder of the existing obligated service and the term of the reenlistment may be considered as 'additional obligated service' for the purposes of computing the SRB."

Since the Department of the Army determined that Mr. Zwolinski had an existing obligation of 1 year at the time of reenlistment, he was paid an SRB based upon additional obligated service of 3 years.

Subsection 308(e) of title 37, United States Code, provides that the SRB provisions shall be administered by regulations promulgated by the Secretary of Defense. The Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), in implementing the SRB provisions, defines additional obligated service as "* * * any active service commitment beyond an existing contractual service agreement. This includes enlistment, extensions of enlistment, enlistment as extended and reenlistments." DODPM para. 10912, change 38, effective June 1, 1974.

The administrative report from the Army indicates that the document in which Mr. Zwolinski adjusted his ETS contains the following proviso: "I understand that this is not an adjustment to my enlistment contract (DD Form 4)." Thus, Mr. Zwolinski did not modify his enlistment contract, which remained as his existing contractual service agreement at the time of reenlistment for the purpose of computing his SRB. Under para. 10912, only the portion of Mr. Zwolinski's reenlistment commitment which extends beyond the termination date of his original enlistment contract constitutes additional obligated service. With regard to his allegations that he was released from active duty on October 31, 1974, for purposes other than reenlistment, there is no evidence of this in the record and the Army has not mentioned it in the administrative report. Thus, we have no alternative other than to consider this case on the facts before us. We, therefore, conclude in the absence of evidence to the contrary that the Army was correct in computing the SRB on the basis of 3 years of additional obligated service.

Mr. Zwolinski also claims that he was induced to reenlist by representations made by reenlistment officers that he would receive a larger SRB than he was actually paid. He argues that he is entitled to receive the additional amount on the grounds of these representations.

Even though officers may have erred in estimating the SRB, and Mr. Zwolinski may have relied upon these estimates, this does not provide a basis for authorizing payment of his claim, since the Government is not liable

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for the erroneous acts of its officers, agents or employees, in the absence of specific statutory authority providing for its liability. Parker v. United States, 198 Ct. Cl. 661, 461 F.2d 806 (1972); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Accordingly, Mr. Zwolinski's claim is disallowed.

Milton J. Aroslan

Acting Comptroller General
of the United States